

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF NEBRASKA**

UNITED STATES OF AMERICA,

Plaintiff,

VS.

MATTHEW K. SHIRLEY,

Defendant.

CASE NO. 8:11CR173

AMENDED TENTATIVE FINDINGS

The Court has received the Revised Presentence Investigation Report (“PSR”) in this case. The government has not objected to the PSR. The Defendant filed objections to the Court’s original Tentative Findings (Filing No. 112). The Defendant has filed a motion for downward departure (Filing No. 106) and a motion for deviation or variation (Filing No. 108) and supporting briefs (Filing Nos. 107, 109). See Order on Sentencing Schedule, ¶ 6. The Court advises the parties that these Tentative Findings are issued with the understanding that, pursuant to *United States v. Booker*, 2005 WL 50108 (U.S. Jan. 12, 2005), the sentencing guidelines are advisory.

The Order on Sentencing Schedule set out various deadlines, including: 1) September 24, 2012, as the date by which counsel was to submit objections to the initial draft of the PSR to the probation officer; and 2) October 11, 2012, as the date for filing objections to the PSR. The Court filed its Tentative Findings on October 18, 2012. On October 19, 2012, the Defendant first filed objections to the PSR, captioning them as objections to the Tentative Findings. Paragraph 6(f) states that any objection first raised in the party's statement, i.e., objections, "will be addressed at the judge's discretion."

The probation officer's cover letter with the final version of the PSR indicates that no objections were raised initially as required. Defense counsel failed to file objections in a timely manner, and therefore the objections are denied as untimely.

IT IS ORDERED:

1. The parties are notified that my tentative findings are that the PSR is correct in all respects;
2. The Defendant's objections (Filing No. 112) are denied as untimely;
3. If **any** party wishes to challenge these tentative findings, the party shall immediately file in the court file and serve upon opposing counsel and the Court a motion challenging these tentative findings, supported by (a) such evidentiary materials as are required (giving due regard to the requirements of the local rules of practice respecting the submission of evidentiary materials), (b) a brief as to the law, and (c) if an evidentiary hearing is requested, a statement describing why an evidentiary hearing is necessary and an estimated length of time for the hearing;
4. Absent submission of the information required by paragraph 2 of this Order, my tentative findings may become final;
5. The Defendant's motions for downward departure (Filing No. 106) and deviation or variation (Filing No. 108) will be heard at sentencing; and
6. Unless otherwise ordered, any motion challenging these tentative findings shall be resolved at sentencing.

DATED this 24th day of October, 2012.

BY THE COURT:

S/ Laurie Smith Camp
Chief United States District Judge